

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC**

In the Matter of	)	
	)	
TCR Sports Broadcasting Holding, L.L.P.,	)	MB Docket No. 08-214
d/b/a Mid-Atlantic Sports Network,	)	
Complainant	)	
	)	File No. CSR-8001-P
v.	)	
	)	
Comcast Corporation,	)	
Defendant	)	

To: Marlene H. Dortch, Secretary

Attn: Hon. Richard L. Sippel  
Chief Administrative Law Judge

**OPPOSITION TO EXPEDITED MOTION TO COMPEL  
PRODUCTION OF DOCUMENTS**

Comcast Corporation (“Comcast”), by its attorneys and pursuant to Section 1.294(b) of the Commission’s rules, hereby opposes the Expedited Motion to Compel Production of Documents (“Motion”) filed by TCR Sports Broadcasting Holding, L.L.P., d/b/a Mid-Atlantic Sports Network (“MASN”) on February 25, 2009. The Motion should be denied for the reasons set forth below.

By Order dated February 26, 2009,<sup>1</sup> your Honor suspended Comcast’s deadline for filing an opposition to the Motion so that the parties could voluntarily attempt to resolve their document production issues. Despite the fact that Comcast produced twenty-eight (28) highly confidential agreements with regional sports networks (“RSNs”) entered into during the last five

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<sup>1</sup> FCC 09M-20.

years,<sup>2</sup> MASN's document request number 2 ("Request") seeks virtually all RSN agreements that may have been in effect at any time over the last ten years,<sup>3</sup> regardless of the geographic area covered. MASN thus seeks documents that (i) would pre-date the creation of MASN in 2005 by six years, (ii) cover geographic areas far outside the Mid-Atlantic region (which is the only locus of this dispute), and (iii) involve the most sensitive and highly confidential information held by Comcast and RSNs. Accordingly, the parties are now at an impasse and Comcast urges that production be limited to the 28 RSN affiliation agreements Comcast has already produced.

After repeatedly asking the Judge to move forward expeditiously, MASN now admits that the document production it seeks will require the deadline for the submission of expert reports to be extended for at least two weeks *after* completion of the production.<sup>4</sup> This will inevitably delay the proceeding given the tight discovery and hearing schedule. The 28 agreements already produced (including those from the two Comcast-affiliated RSNs in the Mid-Atlantic region that are the subject of the Complaint) are more than enough to enable MASN to prepare its case in chief.<sup>5</sup>

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<sup>2</sup> Four non-party RSNs filed objections to the production of many of these agreements due to the commercial sensitivity of the documents and the irreparable harm that would result from such production.

<sup>3</sup> MASN requests agreements that were in effect ten years ago. An agreement in effect at that time necessarily would have been entered into more than ten years ago.

<sup>4</sup> See Exhibit 1, Letter from Evan Leo, Counsel for MASN, to Robert G. Kirk, Counsel for Comcast (Feb. 27, 2008).

<sup>5</sup> See E-Mail from Chief ALJ Richard Sippel to David Frederick, Counsel for MASN, and David Solomon, Counsel for Comcast (Feb. 26, 2009).

## BACKGROUND

On December 5, 2008, MASN and Comcast entered into a joint agreement regarding the scope of discovery.<sup>6</sup> The parties agreed “to produce documents from January 1, 2004 through August 22, 2008. . . .”<sup>7</sup> On the same day, the parties exchanged requests for the production of documents. MASN’s Request called for the production of:

All affiliate agreements, contracts, and related documents for Comcast’s carriage of regional sports networks (both affiliated and unaffiliated) *in the last ten years*, including but not limited to documents sufficient to show the expiration dates of these agreements and contracts, the per-subscriber rates associated with these agreements and contracts, and the quantity of live sports programming telecast on each network for each year covered.<sup>8</sup>

Comcast timely objected to the Request on the basis that it:

(1) is overly broad and unduly burdensome, (2) is vague and ambiguous (particularly the meaning of “related” documents), and (3) seeks documents (a) that are neither relevant to the present litigation nor reasonably calculated to lead to the discovery of admissible evidence, and/or (b) that contain confidential information, including trade secrets and other competitively sensitive business or commercial information, the probative value of which is outweighed by Comcast’s interest in preserving its confidentiality and the disclosure of which would result in the violation of contractual obligations to third parties. Comcast further objects to the Request to the extent that it demands confidential documents, including documents as to which Comcast has confidentiality obligations to third parties.

Nevertheless, subject to, and without waiving, its objections, Comcast agreed to produce (i) its most recent affiliation agreements with Comcast SportsNet Mid-Atlantic (“CSN-MA”) and

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<sup>6</sup> See Exhibit 2, Joint Case Discovery Management Statement (Dec. 5, 2008) (“Joint Discovery Statement”).

<sup>7</sup> *Id.* at 2 (emphasis added). The parties carved out a narrow exception whereby they “agree[d] to search for and produce *specifically identified* documents otherwise within the scope of the document request created outside of that range upon reasonable request, if such documents are *highly likely* to contain relevant information.” *Id.* (emphasis added).

<sup>8</sup> MASN’s First Request for the Production of Documents (Dec. 5, 2008) (emphasis added).

Comcast SportsNet Philadelphia (“CSN-P”) – the two affiliated RSNs identified by MASN in the Complaint – and, (ii) consistent with the Joint Discovery Statement, a list of agreements regarding the carriage of a regional sports network entered into or renewed between January 1, 2004 and August 22, 2008 (“Agreement List”).

The parties subsequently discussed Comcast’s objections to the Request and, without waiving its objections, Comcast agreed to seek the necessary approvals to produce the carriage agreements identified on the Agreement List. As a result of these efforts, on February 23, 2009, Comcast included agreements relating to the carriage of five regional sports networks (“RSNs”) in its document production to MASN. Comcast had not received approval for the others.

On February 25, 2009, MASN filed a motion to compel production of all RSN agreements over the past ten years. MASN made no mention of the Joint Discovery Statement which it had agreed to and which limited the scope of discovery. The Motion was granted hours later but Comcast was expressly provided the opportunity to oppose the Motion by 11:00 a.m. the following day.<sup>9</sup> Prior to the deadline for opposing the Motion, MASN and Comcast reached an agreement whereby Comcast would produce the agreements set forth on the Agreement List by 3:00 p.m. and requested that the deadline for filing an opposition be stayed.

On the morning of February 26, 2009, your Honor granted the parties’ request to stay the opposition deadline via email. Shortly thereafter, four non-party RSNs filed objections to the document request demonstrating that production would cause them irreparable harm. At approximately 3:15 p.m., your Honor sent the formal Order staying the deadline for filing an opposition<sup>10</sup> – it made no mention of the four objections. Accordingly, consistent with the agreement between the parties, Comcast provided the documents identified on the Agreement

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<sup>9</sup> See FCC 09M-19 (“*February 25<sup>th</sup> Order*”).

<sup>10</sup> See FCC 09M-20.

List that had not previously been produced – bringing the total number of agreements produced by Comcast to 28. These agreements are in addition to those MASN already possesses as a signatory, such as the program carriage agreement it currently has with Comcast.

Approximately two hours after production, your Honor responded to the four RSN objections and ordered the parties to confer and attempt to work out production issues. In light of the Order, Comcast made a good faith request for the return of the documents relating to the four objecting RSNs until the companies reached an agreement or your Honor issued an Order resolving the dispute. MASN has obstinately refused to return the documents.

On February 27, 2009, Comcast renewed its request for the return of the documents. MASN again refused but informed Comcast that it would not provide the documents to MASN or any of its experts until the matter was resolved. Pursuant to your Honor's instructions, a conference call was held with all parties and the four RSNs to discuss the pending objections. Comcast and the objecting RSNs again asked for the return of the documents, but MASN rejected these requests. The non-parties crafted a modified protective order designed to address their concerns, which they submitted to your Honor on February 28.

On the same day, despite Comcast's production of 28 agreements, MASN sent a letter to Comcast's counsel seeking to expand significantly the number of agreements to be produced. MASN requested every agreement with a Comcast-affiliated RSN that may have existed at any point over the last ten years, as well as all agreements from the last ten years relating to nine other RSNs that are owned by one of the objecting RSNs and additional "related" material. MASN demanded a response by 8:00 a.m. this morning and Comcast has informed MASN that (i) the 28 agreements previously produced "are more than sufficient to enable MASN to prepare

its case and, therefore, Comcast will not be producing additional material” and (ii) production of these newly identified agreements would needlessly delay the proceeding.<sup>11</sup>

### **ARGUMENT**

MASN is seeking documents that pre-date its existence by almost six years. Thus, its request plainly is more of a “fishing expedition” than the kind of focused discovery contemplated by your Honor for this proceeding. At most, production should be limited to the 28 agreements created during the discovery window established by the Joint Discovery Statement that have already been produced.

MASN should not be entitled to additional production because Comcast’s Objections to MASN’s Document Production Request are meritorious and have never been disputed by MASN.<sup>12</sup> MASN’s Motion does not contest Comcast’s Objection that the Request is overly broad and unduly burdensome. As noted, MASN seeks agreements that are ten years old and predate the formation of MASN. These agreements would shed little light on the market conditions that influenced the decisions made by the parties in 2006 when MASN and Comcast entered into their program carriage agreement. Moreover, given the breadth of MASN’s new request, it would be unduly burdensome and time consuming to identify and obtain all of the RSN agreements requested.<sup>13</sup>

MASN asserts that Comcast’s claims regarding the reasonableness of MASN’s rates compared to other RSNs in the Mid-Atlantic region somehow makes rates charged by any RSN,

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<sup>11</sup> See Exhibit 3, Letter from Robert G. Kirk, Counsel for Comcast, to Evan Leo, Counsel for MASN (Mar. 2, 2009).

<sup>12</sup> See Motion to Compel, Exhibit 2.

<sup>13</sup> In light of Comcast’s good faith reliance on the Joint Discovery Statement, Comcast is not in a position to produce immediately agreements other than those entered into or renewed in the January 1, 2004 to August 22, 2008 period.

anywhere within the United States, relevant. This is not the case. RSN rates set by market forces on the West Coast, for example, are simply not relevant to the RSN rates set by market forces in the Mid-Atlantic region of the East Coast. Moreover, the content carried by RSNs varies widely and also dictates the rate any individual RSN can charge. For example, an RSN with the exclusive game distribution rights to the professional baseball, basketball, and hockey teams in a market will have live pro-sports programming almost year round, making it more desirable than an RSN with only professional baseball teams. Comcast already has produced the agreements it has with other RSNs within the Mid-Atlantic Region – CSN-MA and CSN-P – the agreements most closely relevant to MASN’s claims.

Moreover, as shown by the four objecting RSNs, program carriage agreements are considered the crown jewels both of cable companies such as Comcast and the RSNs that they carry and are generally among the most confidential documents possessed by these companies. Indeed, MASN’s Counsel recognized during the pre-hearing conference on January 29, 2009 that “the rates charged by sports networks is highly confidential and proprietary information. . . .”<sup>14</sup> The extraordinary efforts taken by RSNs to maintain the confidentiality of their program carriage agreements underscores the importance of narrowing MASN’s Request to the discovery period to which the parties previously agreed. If production beyond that period is contemplated, Comcast should be allowed a reasonable amount of time to notify all the RSNs that would be subject to an order compelling production so that they would have an opportunity to oppose such an order.

MASN argues that Comcast’s affiliation agreements and other highly confidential material are necessary for its experts to develop their reports, yet MASN fails to note that its

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<sup>14</sup> Tr. at 243.

expert Mark Wyche has not yet submitted a signed declaration pursuant to the Protective Order, *nearly two weeks after* your Honor entered the protective order on February 18, 2009. By contrast, Comcast's experts, Larry Gerbrandt and Jonathan Orszag, submitted signed declarations on February 19, 2009. MASN's expert reports are due on March 5, only three business days from now. MASN's delay in filing its expert declarations, on the one hand, while insatiably demanding ever more and irrelevant highly confidential documents, on the other, suggests that MASN is more interested in using discovery as a sword rather than a means to discover relevant evidence for this proceeding.

Comcast has already produced 28 highly confidential affiliation agreements, including those involving the two RSNs specifically identified by MASN in its Complaint – CSN-MA and CSN-P. Whatever their relevance to MASN's case, the already produced agreements surely represent a critical mass of agreements for Mr. Wyche to have *begun* reviewing, as MASN insisted was necessary. Further, Comcast also has produced thousands of *other* highly confidential documents and related materials in response to MASN's document requests. Given that MASN has not yet had Mark Wyche sign a declaration to begin reviewing the affiliation agreements produced, such action demonstrates that the *additional* affiliation agreements and related documents sought are *not* critical to this case.

Finally, the additional production sought by MASN – which would have little if any probative value – would needlessly delay this proceeding. In fact, MASN has already indicated that “it will be necessary to obtain an extension for the submission of expert reports” and has proposed to extend the deadline until two weeks after production is completed in response to its



most recent document production request.<sup>15</sup> Given the tight schedule in this proceeding, such an extension will inevitably delay conclusion of the hearing.

### CONCLUSION

Given that MASN already has the most relevant agreements – the agreement between MASN and Comcast, as well as the terms of carriage with Comcast and CSN-MA and CSN-P – and 26 additional agreements, no additional production should be authorized. A draft order that reflects this position is attached.

Respectfully submitted,

COMCAST CORPORATION

By: /s/ David H. Solomon

David H. Solomon

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J. Wade Lindsay

Robert G. Kirk

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*Its Attorneys*

March 2, 2009

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<sup>15</sup> See Letter from Evan Leo, Counsel for MASN, to Robert G. Kirk, Counsel for Comcast (Feb. 27, 2008).

## EXHIBIT 1

KELLOGG, HUBER, HANSEN, TODD, EVANS & FIGEL, P.L.L.C.

SUMNER SQUARE  
1615 M STREET, N.W.  
SUITE 400  
WASHINGTON, D.C. 20036-3209

(202) 326-7900

FACSIMILE:  
(202) 326-7999

February 27, 2009

*Via E-mail*

Robert G. Kirk  
Wilkinson Barker Knauer, LLP  
2300 N Street, NW  
Suite 700  
Washington, D.C. 20037

Dear Bob:

1. As discussed on our call this morning, the following provides further detail as to the documents that TCR seeks in response to its Request No. 2.

First, we request all affiliate agreements between Comcast and Fox-owned RSNs that were in effect at any point during the past ten years. Comcast's production does not include affiliate agreements for at least the following Fox-owned RSNs that Comcast carries in its service territory: (a) FSN-Northwest; (b) FSN Bay Area (now CSN Bay Area); (c) Fox Sports Houston and Fox Sports Southwest; (d) Fox Sports Rocky Mountain; (e) Fox Sports North; (f) Fox Sports Chicago (prior to June 2006); (g) Fox Sports Utah; (h) Fox Sports Tennessee; and (i) Fox Sports Pittsburgh.

Second, TCR's Request No. 2 requests affiliate agreements, contracts, and any "related documents," including documents sufficient to show the per-subscriber rates and the quantity of live sports programming carried on each RSN for each year covered. We have been unable to locate in Comcast's production any documents other than the affiliate agreements and amendments thereto that provide per-subscriber rates, live sporting event counts, or the overall compensation that Comcast pays pursuant to its agreements. It is our understanding that Comcast should have documents prepared in the ordinary course of business setting forth, by year and by "zone," a recent payment summary setting forth the per-subscriber rates or other financial terms it pays to each RSN, and we request those documents. Comcast should also have additional documents that provide the total

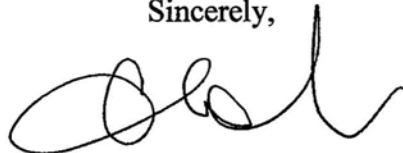
number of professional events actually carried by each RSN in each year, by zone where relevant, and we request those documents as well. TCR seeks these documents both with respect to the agreements that Comcast has already produced as well as the additional affiliate agreements requested in the e-mail.

Third, Comcast's production includes affiliate agreements for CSN-MA and CSN-Philly but no other Comcast-owned RSNs. We request all affiliate agreements between Comcast and Comcast-owned RSNs that were in effect at any point during the past ten years.

If Comcast agrees to produce the documents described above, TCR would agree to stay, without prejudice, its request for any additional affiliate agreements to which it would otherwise be entitled pursuant to the ALJ's order granting TCR's Motion to Compel.

2. As we noted on this morning's call, given the ongoing dispute with respect to many of the affiliate agreements and your request that TCR not share such agreements with its experts, TCR believes it will be necessary to obtain an extension for the submission of expert reports. We propose extending the date that expert reports are due to two weeks from the time that Comcast produces the affiliate agreements and related material described above. Please let us know by Monday at 8 a.m. whether Comcast is agreeable to this proposal as we would like to include it in what we file with the ALJ on Monday.

Sincerely,

A handwritten signature in black ink, appearing to read 'Evan Leo', with a stylized, cursive script.

Evan Leo

## EXHIBIT 2

**BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554**

In the Matter of	)	
	)	
TCR Sports Broadcasting Holding, L.L.P.,	)	
	)	
Complainant,	)	
	)	
v.	)	MB Docket No. 08-214
	)	File No. CSR-8001-P
	)	
Comcast Corporation,	)	
	)	
Defendant.	)	
	)	

**JOINT CASE DISCOVERY MANAGEMENT STATEMENT**

The parties to this action hereby agree to this Joint Case Discovery Management Statement. This statement sets forth a compromise between the parties, and neither party's agreement to these terms shall be viewed as a concession concerning the scope of discovery available under applicable rules and procedures. The parties remain free to seek or oppose discovery not addressed in this agreement.

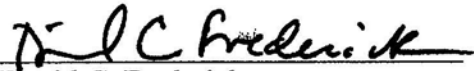
**A. Document Discovery**

1. The parties agree to limit document requests to 10 requests per side, and that no such request shall contain multiple subparts.
2. The parties agree to begin a rolling production of documents on December 22, 2008 and to substantially complete production of documents by January 12, 2009.
3. The parties agree not to produce documents that are subject to the attorney-client privilege or the attorney work product doctrine, and the parties agree that they shall not produce a privilege log for such documents. Any such documents that are inadvertently produced shall be returned upon a reasonable request made within 3 days of the discovery of such inadvertent production.

4. Each party agrees that it shall treat all of the documents in this proceeding pursuant to the Protective Order to be entered into between the parties and adopted by the Presiding Judge.
5. The parties agree to produce documents from January 1, 2004 through August 22, 2008, although both parties agree to search for and produce specifically identified documents otherwise within the scope of the document requests created outside of that range upon reasonable request, if such documents are highly likely to contain relevant information.

**B. Experts**

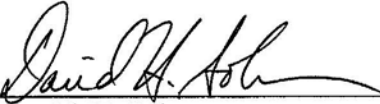
6. The parties agree that expert reports shall be exchanged on January 26, 2009, or two weeks from the date that document production is substantially complete, whichever is later. The parties agree that such reports will provide the documents on which the expert relied in forming the opinions set forth in the report.
7. The parties agree that they will not request or produce drafts of expert reports or testimony, or of documents reviewed but not relied on by the experts, and that they will not depose the experts on the drafts or the drafting process. The parties remain free to depose experts on the analytical process underlying their requests.
8. The parties agree that the parties will exercise their best efforts to have expert depositions take place within two weeks from the date that expert reports are exchanged.



David C. Frederick

On behalf of TCR Sports Broadcasting Holding, LLP

Date:



David H. Solomon

On behalf of Comcast Corporation

Date: 12/5/08



## EXHIBIT 3

March 2, 2009

Evan Leo  
Kellog, Huber, Hansen, Todd,  
Evans & Figel, P.L.L.C.  
1615 M Street, NW, Suite 400  
Washington, DC 20036

Re: *TCR Sports Broadcasting Holding, L.L.P. v. Comcast Corporation*  
*File No. CSR-8001-P*

Dear Evan:

I received your letter on Friday at 5:13 pm requesting additional documents and a response by 8:00 am this morning. After conferring with Comcast Corporation ("Comcast"), our responses are set forth below:

1. We believe that the Comcast Affiliation Agreements already produced are more than sufficient to enable MASN to prepare its case and, therefore, Comcast will not be producing additional material. Moreover, production of these newly identified agreements will needlessly delay the proceeding.
2. With regard to the two-week extension, we believe it is premature to address this issue until Judge Sippel resolves the outstanding objections to your Document Requests and the third-party objections to your Motion to Compel.

If you have any questions, please do not hesitate to contact me.

Sincerely,

Robert G. Kirk

## EXHIBIT 4

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC**

In the Matter of	)	
	)	
TCR Sports Broadcasting Holding, L.L.P.,	)	MB Docket No. 08-214
d/b/a Mid-Atlantic Sports Network,	)	
Complainant	)	
	)	File No. CSR-8001-P
v.	)	
	)	
Comcast Corporation,	)	
Defendant	)	

**DRAFT ORDER**

**Issued: March 2, 2009**

**Released: March 2, 2009**

On February 25, 2009, TCR Sports Broadcasting Holding, L.L.P., d/b/a Mid-Atlantic Sports Network (“MASN”) filed an Expedited Motion to Compel Production of Documents (“Motion”) relating to affiliation agreements involving Comcast Corporation (“Comcast”) and Regional Sports Networks (“RSNs”). The Motion was granted and Comcast produced twenty eight agreements in response to MASN’s request. Based on this production and Comcast’s Opposition to the Motion filed on March 2, 2009:

IT IS HEREBY ORDERED that the Motion is GRANTED with regard to the 28 agreements already produced (SUBJECT TO THE RESOLUTION OF THIRD PARTY OBJECTIONS), and is DENIED to the extent additional agreements and related materials are being sought;

FURTHER, FCC 09M-19 is RESCINDED to the extent it required production of documents beyond those already produced.

FEDERAL COMMUNICATIONS COMMISSION

Richard L. Sippel  
Chief Administrative Law Judge

### **CERTIFICATE OF SERVICE**

I, Jennifer L. Canose, hereby certify that, on March 2, 2009, copies of the attached Opposition to Expedited Motion to Compel Production of Documents were served by United States Mail, first class postage prepaid, and email to the following:

David C. Frederick  
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Honorable Richard L. Sippel  
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Ms. Mary Gosse\*  
Office of Administrative Law Judges  
Federal Communications Commission  
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Jennifer L. Canose

\*Courtesy Copy